

AMENDED IN SENATE MAY 31, 2005
AMENDED IN SENATE MAY 23, 2005
AMENDED IN SENATE MAY 17, 2005
AMENDED IN SENATE MAY 4, 2005
AMENDED IN SENATE MAY 2, 2005
AMENDED IN SENATE APRIL 25, 2005

SENATE BILL

No. 803

Introduced by Senator Ducheny

February 22, 2005

An act to amend Sections 11999.5, 11999.6, 11999.9, 11999.10, and 11999.12 of the Health and Safety Code, and to amend Sections 1210, 1210.1, and 3063.1 of the Penal Code, relating to drug treatment, ~~making an appropriation therefor~~, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 803, as amended, Ducheny. Ongoing Substance Abuse and Crime Prevention Act of 2005.

Existing law, the Substance Abuse and Crime Prevention Act of 2000, was enacted by the voters at the November 2000 general election. Amendment of the act by the Legislature requires a 2/3 vote of both houses of the Legislature. The act requires all amendments to it to further the act and be consistent with its purposes. The act defines "drug treatment program" for purposes of the act, and specifically excludes in-custody drug treatment from that definition.

The act defines "successful completion of treatment" as a defendant who has completed the prescribed course of treatment and, as a result,

there is reasonable cause to believe that the defendant will not abuse controlled substances in the future.

This bill would instead define “successful completion of treatment” as a defendant who has completed the prescribed course of treatment. Completion of treatment would not mean cessation of narcotic replacement therapy.

The act requires any person convicted of a nonviolent drug possession offense to receive probation. As a condition of probation, the court is required to require a defendant to participate in, and complete, an appropriate drug treatment program. The act prohibits the imposition of incarceration as a condition of probation.

This bill would require drug testing as a condition of probation. The bill would require a person subject to the act to be monitored by the court, as specified.

The act does not apply to a defendant who has been convicted of one or more serious or violent felonies, unless the nonviolent drug possession offense occurred more than 5 years after the defendant was free from custody for the prior offense and from the commission of other types of crimes against a person.

This bill would, with respect to the above description of a defendant to whom the act does not apply, add the condition that in order to exclude a defendant the court must find that the defendant poses a danger to the safety of others and would not benefit from a drug treatment program, and would similarly prohibit a person who has previously served 3 separate prison terms for non-drug-related felonies from benefiting from the provisions of the bill, if the court makes that finding. The bill would provide that the court shall state its findings, and the reasons for those findings, on the record.

The act does not apply to any defendant who, while using a firearm unlawfully possesses or is unlawfully under the influence of certain controlled substances.

This bill would instead make its provisions inapplicable to any defendant who, while armed with a deadly weapon unlawfully possesses or is under the influence of certain controlled substances.

Under the act, a defendant may petition the sentencing court for dismissal of the charges at any time after completion of drug treatment.

This bill would authorize the court, after a hearing to determine whether the defendant has successfully completed treatment and

probation, including refraining from the use of drugs after completion of treatment, to set the conviction aside, as specified.

Under the act, once the indictment, complaint, or information is dismissed, a record pertaining to the arrest and conviction for that offense may not be used to deny the defendant employment.

Under the act, if a defendant violates probation, as specified, the court may revoke probation or it may intensify or alter the drug treatment plan.

This bill would authorize a court to also order incarceration for a specified period, in order to enhance treatment compliance, and in some circumstances, to order the defendant to complete a residential drug treatment program if available, or be placed in county jail for not more than 10 days for detoxification purposes only. *This bill would however, provide that no incarceration costs will be reimbursed from the fund.*

The act appropriates \$60,000,000 per year for purposes of the act, through the 2005-06 fiscal year. The act prohibits money appropriated for its purposes to be used for drug testing.

~~This bill would appropriate \$150,000,000 per year through the 2010-11 fiscal year~~ *state the Legislature's intent to appropriate funds annually in the budget act.* The bill would authorize money appropriated for its purposes to be used for mandatory drug testing.

Existing law requires an annual study to evaluate the effectiveness of the act.

This bill would change the items to be included in that study.

Existing law, with some exceptions, prohibits the suspension or revocation of parole for commission of a nonviolent drug possession offense or violating any drug-related condition of parole. Further, existing law prescribes the steps the Parole Authority is to take upon this type of violation, and the actions that any drug treatment provider must thereafter take, as specified. Drug treatment services are not to be required as a condition of parole for longer than 12 months.

This bill would change some references to the Parole Authority, to the Department of Corrections Parole Division. Further this bill would allow the department to make a finding that treatment beyond 12 months is necessary, and under those conditions, treatment may be extended to 24 months.

Because the bill would increase punishment for crimes, including authorizing jail time, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: ~~yes~~ no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11999.5 of the Health and Safety Code
2 is amended to read:

3 11999.5. Upon passage of this act, \$60,000,000 shall be
4 continuously appropriated from the General Fund to the
5 Substance Abuse Treatment Trust Fund for the 2000-01 fiscal
6 year. There is hereby continuously appropriated from the General
7 Fund to the Substance Abuse Treatment Trust Fund an additional
8 \$120,000,000 for the 2001-02 fiscal year, an additional sum of
9 \$120,000,000 for each subsequent fiscal year until the 2005-06
10 fiscal year, ~~an additional sum of one hundred fifty million dollars~~
11 ~~(\$150,000,000) for the 2006-07 fiscal year, and an additional~~
12 ~~sum of one hundred fifty million dollars (\$150,000,000) in each~~
13 ~~subsequent fiscal year, until the 2010-11 fiscal year. It is the~~
14 ~~intent of the Legislature to appropriate to the Substance Abuse~~
15 ~~Treatment Trust fund an amount no less than one hundred twenty~~
16 ~~million dollars (\$120,000,000) in the annual budget act. These~~
17 funds shall be transferred to the Substance Abuse Treatment
18 Trust Fund on July 1 of each of these specified fiscal years.
19 Funds transferred to the Substance Abuse Treatment Trust Fund
20 are not subject to annual appropriation by the Legislature and
21 may be used without a time limit. Nothing in this section
22 precludes additional appropriations by the Legislature to the
23 Substance Abuse Treatment Trust Fund.

24 SEC. 2. Section 11999.6 of the Health and Safety Code is
25 amended to read:

26 11999.6. Moneys deposited in the Substance Abuse
27 Treatment Trust Fund shall be distributed annually by the

1 Secretary of the Health and Human Services Agency through the
2 State Department of Alcohol and Drug Programs to counties to
3 cover the costs of placing persons in and providing drug
4 treatment programs under this act, and vocational training, family
5 counseling and literacy training under this act. Additional costs
6 that may be reimbursed from the Substance Abuse Treatment
7 Trust Fund include probation department costs, court monitoring
8 costs and any miscellaneous costs made necessary by the
9 provisions of this act, including mandatory drug testing services.
10 *Incarceration costs cannot be reimbursed from the fund.* Those
11 moneys shall be allocated to counties through a fair and equitable
12 distribution formula that includes, but is not limited to, per capita
13 arrests for controlled substance possession violations and
14 substance abuse treatment caseload, as determined by the
15 department as necessary to carry out the purposes of this act. The
16 department may reserve a portion of the fund to pay for direct
17 contracts with drug treatment service providers in counties or
18 areas in which the director of the department has determined that
19 demand for drug treatment services is not adequately met by
20 existing programs. However, nothing in this section shall be
21 interpreted or construed to allow any entity to use funds from the
22 Substance Abuse Treatment Trust Fund to supplant funds from
23 any existing fund source or mechanism currently used to provide
24 substance abuse treatment.

25 SEC. 3. Section 11999.9 of the Health and Safety Code is
26 amended to read:

27 11999.9. The department shall conduct two three-year
28 followup studies to evaluate the effectiveness and financial
29 impact of the programs that are funded pursuant to the
30 requirements of this act, and submit those evaluations to the
31 Legislature not later than July 1, 2010, and July 1, 2013. The
32 evaluation studies shall include, but not be limited to, (a)
33 criminal justice measures on rearrests, jail and prison days
34 averted, crime trends, and (b) treatment measures on completion
35 rates and quality of life indicators, such as alcohol and drug use,
36 employment, health, mental health, and family and social
37 supports.

38 In addition to the studies to evaluate the effectiveness and
39 financial impact of the programs that are funded pursuant to the
40 requirements of this act, the department shall produce an annual

1 report detailing the number and characteristics of participants
2 served as a result of this act and the related costs.

3 SEC. 4. Section 11999.10 of the Health and Safety Code is
4 amended to read:

5 11999.10. Outside Evaluation Process

6 The department shall allocate up to 0.5 percent of the fund's
7 total moneys each year to fund the costs of the studies required in
8 Section 11999.9 by a public or private university or other public
9 or private institution with similar research qualifications.

10 SEC. 5. Section 11999.12 of the Health and Safety Code is
11 amended to read:

12 11999.12. Audit of Expenditures

13 The department shall conduct periodic audits of the
14 expenditures made by any county that is funded, in whole or in
15 part, with funds provided by this act. Counties shall repay to the
16 department any funds that are not spent in accordance with the
17 requirements of this act. In making repayment, a county may use
18 trust fund moneys previously or presently allocated to the county
19 under this act, or the department may require a corrective action
20 by the county in the place of repayment, as determined by the
21 department.

22 SEC. 6. Section 1210 of the Penal Code is amended to read:

23 1210. As used in Sections 1210.1 and 3063.1 of this code,
24 and Division 10.8 (commencing with Section 11999.4) of the
25 Health and Safety Code, the following definitions apply:

26 (a) The term "nonviolent drug possession offense" means the
27 unlawful personal use, possession for personal use, or
28 transportation for personal use of any controlled substance
29 identified in Section 11054, 11055, 11056, 11057 or 11058 of the
30 Health and Safety Code, or the offense of being under the
31 influence of a controlled substance in violation of Section 11550
32 of the Health and Safety Code. The term "nonviolent drug
33 possession offense" does not include the possession for sale,
34 production, or manufacturing of any controlled substance and
35 does not include violations of Section 4573.6 or 4573.8.

36 (b) The term "drug treatment program" or "drug treatment"
37 means a state licensed or certified community drug treatment
38 program, which may include one or more of the following: (1)
39 drug education, (2) outpatient services, (3) narcotic replacement
40 therapy, (4) residential treatment, (5) detoxification services, and

(6) aftercare services. The term “drug treatment program” or “drug treatment” includes a drug treatment program operated under the direction of the Veterans Health Administration of the Department of Veterans Affairs or a program specified in Section 8001. That type of program shall be eligible to provide drug treatment services without regard to the licensing or certification provisions required by this subdivision. The term “drug treatment program” or “drug treatment” does not include drug treatment programs offered in a prison or jail facility.

(c) The term “successful completion of treatment” means that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment as recommended by the treatment provider and ordered by the court. Completion of treatment shall not require cessation of narcotic replacement therapy.

(d) The term “misdemeanor not related to the use of drugs” means a misdemeanor that does not involve (1) the simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or (2) any activity similar to those listed in paragraph (1).

SEC. 7. Section 1210.1 of the Penal Code is amended to read:

1210.1. (a) Notwithstanding any other provision of law, and except as provided in subdivision (b), any person convicted of a nonviolent drug possession offense shall receive probation. As a condition of probation, the court shall require participation in and completion of an appropriate drug treatment program. The court shall impose appropriate drug testing as a condition of probation. The court may also impose, as a condition of probation, participation in vocational training, family counseling, literacy training and/or community service. A court may not impose incarceration as an additional condition of probation. Aside from the limitations imposed in this subdivision, the trial court is not otherwise limited in the type of probation conditions it may impose. Probation shall be imposed by suspending the imposition of sentence. No person shall be denied the opportunity to benefit from the provisions of the act based solely upon evidence of a co-occurring psychiatric or developmental disorder.

To the greatest extent possible, any person who is convicted of, and placed on probation for, a nonviolent drug possession offense under this section shall be monitored by the court

1 through the use of a dedicated court calendar and the
2 incorporation of a collaborative court model of oversight that
3 includes close collaboration with treatment providers and
4 probation, drug testing commensurate with treatment needs and
5 supervision of progress through review hearings.

6 In addition to any fine assessed under other provisions of law,
7 the trial judge may require any person convicted of a nonviolent
8 drug possession offense who is reasonably able to do so to
9 contribute to the cost of his or her own placement in a drug
10 treatment program.

11 (b) Subdivision (a) shall not apply to any of the following:

12 (1) Any defendant who previously has been convicted of one
13 or more serious or violent felonies as defined in subdivision (c)
14 of Section 667.5 or subdivision (c) of Section 1192.7, unless the
15 nonviolent drug possession offense occurred after a period of five
16 years in which the defendant remained free of both prison
17 custody and the commission of an offense that results in a felony
18 conviction other than a nonviolent drug possession offense, or a
19 misdemeanor conviction involving physical injury or the threat
20 of physical injury to another person.

21 (2) Any defendant who, in addition to one or more nonviolent
22 drug possession offenses, has been convicted in the same
23 proceeding of a misdemeanor not related to the use of drugs or
24 any felony.

25 (3) Any defendant who, while armed with a deadly weapon
26 with the intent to use same as a deadly weapon, unlawfully
27 possesses, or is under the influence of, any controlled substance
28 identified in Section 11054, 11055, 11056, 11057, or 11058 of
29 the Health and Safety Code.

30 (4) Any defendant who refuses drug treatment as a condition
31 of probation.

32 (5) Any defendant who has two separate convictions for
33 nonviolent drug possession offenses, has participated in two
34 separate courses of drug treatment pursuant to subdivision (a),
35 and is found by the court, by clear and convincing evidence, to
36 be unamenable to any and all forms of available drug treatment,
37 as defined in subdivision (b) of Section 1210. Notwithstanding
38 any other provision of law, the trial court shall sentence those
39 defendants to 30 days in jail.

1 (c) (1) A defendant who meets the requirements for treatment
2 eligibility in paragraph (1) of subdivision (b) shall be presumed
3 eligible for treatment under subdivision (a). The court may
4 exclude such a defendant from treatment under subdivision (a)
5 where the court, pursuant to the motion of the prosecutor or its
6 own motion, finds that the defendant poses a present danger to
7 the safety of others and would not benefit from a drug treatment
8 program. The court shall state its findings, and the reasons for
9 those findings, on the record.

10 (2) Any defendant who has previously been convicted of at
11 least three non-drug-related felonies for which the defendant has
12 served three separate prison terms within the meaning of
13 subdivision (b) of Section 667.5 of the Penal Code shall be
14 presumed eligible for treatment under subdivision (a). The court
15 may exclude such a defendant from treatment under subdivision
16 (a) where the court, pursuant to the motion of the prosecutor or
17 its own motion, finds that the defendant poses a present danger to
18 the safety of others and would not benefit from a drug treatment
19 program. The court shall state its findings, and the reasons for
20 those findings, on the record.

21 (d) Within seven days of an order imposing probation under
22 subdivision (a), the probation department shall notify the drug
23 treatment provider designated to provide drug treatment under
24 subdivision (a). Within 30 days of receiving that notice, the
25 treatment provider shall prepare a treatment plan and forward it
26 to the probation department for distribution to the court and
27 counsel. The treatment provider shall provide to the probation
28 department standardized treatment progress reports, with
29 minimum data elements as determined by the department,
30 including all drug testing results. At a minimum, the reports shall
31 be provided to the court every 90 days, or more frequently, as the
32 court directs.

33 (1) If at any point during the course of drug treatment the
34 treatment provider notifies the probation department and the
35 court that the defendant is unamenable to the drug treatment
36 being provided, but may be amenable to other drug treatments or
37 related programs, the probation department may move the court
38 to modify the terms of probation, or on its own motion, the court
39 may modify the terms of probation after a hearing to ensure that
40 the defendant receives the alternative drug treatment or program.

(2) If at any point during the course of drug treatment the treatment provider notifies the probation department and the court that the defendant is unamenable to the drug treatment provided and all other forms of drug treatment programs pursuant to subdivision (b) of Section 1210, the probation department may move to revoke probation. At the revocation hearing, if it is proved that the defendant is unamenable to all drug treatment programs pursuant to subdivision (b) of Section 1210, the court may revoke probation.

(3) Drug treatment services provided by subdivision (a) as a required condition of probation may not exceed 12 months, unless the court makes a finding supported by the record, that the continuation of treatment services beyond 12 months is necessary for drug treatment to be successful. If such a finding is made, the court may order up to two six-month extensions of treatment services. The provision of treatment services under this act shall not exceed 24 months.

(e) (1) At any time after completion of drug treatment and the terms of probation, the court shall conduct a hearing, and if the court finds that the defendant successfully completed drug treatment, and substantially complied with the conditions of probation, including refraining from the use of drugs after the completion of treatment, the conviction on which the probation was based shall be set aside and the court shall dismiss the indictment, complaint, or information against the defendant. In addition, except as provided in paragraphs (2) and (3), both the arrest and the conviction shall be deemed never to have occurred. The defendant may additionally petition the court for a dismissal of charges at any time after completion of the prescribed course of drug treatment. Except as provided in paragraph (2) or (3), the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.

(2) Dismissal of an indictment, complaint, or information pursuant to paragraph (1) does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person or prevent his or her conviction under Section 12021.

(3) Except as provided below, after an indictment, complaint, or information is dismissed pursuant to paragraph (1), the

1 defendant may indicate in response to any question concerning
2 his or her prior criminal record that he or she was not arrested or
3 convicted for the offense. Except as provided below, a record
4 pertaining to an arrest or conviction resulting in successful
5 completion of a drug treatment program under this section may
6 not, without the defendant's consent, be used in any way that
7 could result in the denial of any employment, benefit, license, or
8 certificate.

9 Regardless of his or her successful completion of drug
10 treatment, the arrest and conviction on which the probation was
11 based may be recorded by the Department of Justice and
12 disclosed in response to any peace officer application request or
13 any law enforcement inquiry. Dismissal of an information,
14 complaint, or indictment under this section does not relieve a
15 defendant of the obligation to disclose the arrest and conviction
16 in response to any direct question contained in any questionnaire
17 or application for public office, for a position as a peace officer
18 as defined in Section 830, for licensure by any state or local
19 agency, for contracting with the California State Lottery, or for
20 purposes of serving on a jury.

21 (f) (1) If probation is revoked pursuant to the provisions of
22 this subdivision, the defendant may be incarcerated pursuant to
23 otherwise applicable law without regard to the provisions of this
24 section.

25 (2) If a defendant receives probation under subdivision (a),
26 and violates that probation either by committing an offense that
27 is not a nonviolent drug possession offense, or by violating a
28 non-drug-related condition of probation, and the state moves to
29 revoke probation, the court may remand the defendant for a
30 period not exceeding 30 days during which time the court may
31 receive input from treatment, probation, the state, and the
32 defendant, and the court may conduct further hearings as it
33 deems appropriate to determine whether or not probation should
34 be reinstated under this section. If the court reinstates the
35 defendant on probation, the court may modify the treatment plan
36 and any other terms of probation, and continue the defendant in a
37 treatment program under this act. If the court reinstates the
38 defendant on probation, the court may, after receiving input from
39 the treatment provider and probation, if available, intensify or
40 alter the treatment plan under subdivision (a), and impose

1 sanctions, including jail sanctions not exceeding 30 days, as a
2 treatment tool to enhance treatment compliance.

3 (3) (A) If a defendant receives probation under subdivision
4 (a), and violates that probation either by committing a nonviolent
5 drug possession offense, or a misdemeanor for simple possession
6 or use of drugs or drug paraphernalia, being present where drugs
7 are used, or failure to register as a drug offender, or any activity
8 similar to those listed in paragraph (1) of subdivision (d) of
9 Section 1210, or by violating a drug-related condition of
10 probation, and the state moves to revoke probation, the court
11 shall conduct a hearing to determine whether probation shall be
12 revoked. The trial court shall revoke probation if the alleged
13 probation violation is proved and the state proves by a
14 preponderance of the evidence that the defendant poses a danger
15 to the safety of others. If the court does not revoke probation, it
16 may intensify or alter the drug treatment plan, and in addition, if
17 the violation does not involve the recent use of drugs as a
18 circumstance of the violation, including, but not limited to,
19 violations relating to failure to appear at treatment or court,
20 noncompliance with treatment, and failure to report for drug
21 testing, the court may impose sanctions including jail sanctions
22 that may not exceed 48 hours of continuous custody as a
23 treatment tool to enhance treatment compliance and impose other
24 changes in the terms and conditions of probation. The court shall
25 consider, among other factors, the seriousness of the violation,
26 previous treatment compliance, employment, *education*,
27 *vocational training*, medical conditions, *medical treatment*,
28 *including narcotics replacement treatment*, child support
29 obligations, and family responsibilities. If one of the
30 circumstances of the violation involves recent drug use, as well
31 as other circumstances of violation, and the circumstance of
32 recent drug use is demonstrated to the court by satisfactory
33 evidence and a finding made on the record, the court may, after
34 receiving input from treatment and probation, if available, direct
35 the defendant to enter a licensed detoxification or residential
36 treatment facility, and if there is no bed immediately available in
37 such a facility, the court may order that the defendant be
38 confined in a county jail for detoxification purposes only, if the
39 jail offers detoxification services, for a period not to exceed 10
40 days. The detoxification services must provide narcotic

1 replacement therapy for those defendants presently actually
2 receiving narcotic replacement therapy.

3 (B) If a defendant receives probation under subdivision (a),
4 and for the second time violates that probation either by
5 committing a nonviolent drug possession offense, or a
6 misdemeanor for simple possession or use of drugs or drug
7 paraphernalia, being present where drugs are used, or failure to
8 register as a drug offender, or any activity similar to those listed
9 in paragraph (1) of subdivision (d) of Section 1210, or by
10 violating a drug-related condition of probation, and the state
11 moves to revoke probation, the court shall conduct a hearing to
12 determine whether probation shall be revoked. The trial court
13 shall revoke probation if the alleged probation violation is proved
14 and the state proves by a preponderance of the evidence either
15 that the defendant poses a danger to the safety of others or is
16 unamenable to drug treatment. In determining whether a
17 defendant is unamenable to drug treatment, the court may
18 consider, to the extent relevant, whether the defendant (i) has
19 committed a serious violation of rules at the drug treatment
20 program, (ii) has repeatedly committed violations of program
21 rules that inhibit the defendant's ability to function in the
22 program, or (iii) has continually refused to participate in the
23 program or asked to be removed from the program. If the court
24 does not revoke probation, it may intensify or alter the drug
25 treatment plan, and may, in addition, if the violation does not
26 involve the recent use of drugs as a circumstance of the violation,
27 including, but not limited to, violations relating to failure to
28 appear at treatment or court, noncompliance with treatment, and
29 failure to report for drug testing, impose sanctions including jail
30 sanctions that may not exceed 120 hours of continuous custody
31 as a treatment tool to enhance treatment compliance and impose
32 other changes in the terms and conditions of probation. The court
33 shall consider, among other factors, the seriousness of the
34 violation, previous treatment compliance, employment,
35 *education, vocational training*, medical conditions, *medical*
36 *treatment, including narcotics replacement treatment*, child
37 support obligations, and family responsibilities. If one of the
38 circumstances of the violation involves recent drug use, as well
39 as other circumstances of violation, and the circumstance of
40 recent drug use is demonstrated to the court by satisfactory

1 evidence and a finding made on the record, the court may, after
2 receiving input from treatment and probation, if available, direct
3 the defendant to enter a licensed detoxification or residential
4 treatment facility, and if there is no bed immediately available in
5 the facility, the court may order that the defendant be confined in
6 a county jail for detoxification purposes only, if the jail offers
7 detoxification services, for a period not to exceed 10 days.
8 Detoxification services must provide narcotic replacement
9 therapy for those defendants presently actually receiving narcotic
10 replacement therapy.

11 (C) If a defendant receives probation under subdivision (a),
12 and for the third or subsequent time violates that probation either
13 by committing a nonviolent drug possession offense, or by
14 violating a drug-related condition of probation, and the state
15 moves for a third or subsequent time to revoke probation, the
16 court shall conduct a hearing to determine whether probation
17 shall be revoked. If the alleged probation violation is proved, the
18 defendant is not eligible for continued probation under
19 subdivision (a) unless the court determines that the defendant is
20 not a danger to the community and would benefit from further
21 treatment under subdivision (a). The court may then either
22 intensify or alter the treatment plan under subdivision (a) or
23 transfer the defendant to a highly structured drug court. If the
24 court continues the defendant in treatment under subdivision (a),
25 or drug court, the court may impose appropriate sanctions
26 including jail sanctions as the court deems appropriate.

27 (D) If a defendant on probation at the effective date of this act
28 for a nonviolent drug possession offense violates that probation
29 either by committing a nonviolent drug possession offense, or a
30 misdemeanor for simple possession or use of drugs or drug
31 paraphernalia, being present where drugs are used, or failure to
32 register as a drug offender, or any activity similar to those listed
33 in paragraph (1) of subdivision (d) of Section 1210, or by
34 violating a drug-related condition of probation, and the state
35 moves to revoke probation, the court shall conduct a hearing to
36 determine whether probation shall be revoked. The trial court
37 shall revoke probation if the alleged probation violation is proved
38 and the state proves by a preponderance of the evidence that the
39 defendant poses a danger to the safety of others. If the court does
40 not revoke probation, it may modify or alter the treatment plan,

1 and in addition, if the violation does not involve the recent use of
2 drugs as a circumstance of the violation, including, but not
3 limited to, violations relating to failure to appear at treatment or
4 court, noncompliance with treatment, and failure to report for
5 drug testing, the court may impose sanctions including jail
6 sanctions that may not exceed 48 hours of continuous custody as
7 a treatment tool to enhance treatment compliance and impose
8 other changes in the terms and conditions of probation. The court
9 shall consider, among other factors, the seriousness of the
10 violation, previous treatment compliance, employment, medical
11 conditions, child support obligations, and family responsibilities.
12 If one of the circumstances of the violation involves recent drug
13 use, as well as other circumstances of violation, and the
14 circumstance of recent drug use is demonstrated to the court by
15 satisfactory evidence and a finding made on the record, the court
16 may, after receiving input from treatment and probation, if
17 available, direct the defendant to enter a licensed detoxification
18 or residential treatment facility, and if there is no bed
19 immediately available in such a facility, the court may order that
20 the defendant be confined in a county jail for detoxification
21 purposes only, if the jail offers detoxification services, for a
22 period not to exceed 10 days. The detoxification services must
23 provide narcotic replacement therapy for those defendants
24 presently actually receiving narcotic replacement therapy.

25 (E) If a defendant on probation at the effective date of this act
26 for a nonviolent drug possession offense violates that probation a
27 second time either by committing a nonviolent drug possession
28 offense, or a misdemeanor for simple possession or use of drugs
29 or drug paraphernalia, being present where drugs are used, or
30 failure to register as a drug offender, or any activity similar to
31 those listed in paragraph (1) of subdivision (d) of Section 1210,
32 or by violating a drug-related condition of probation, and the
33 state moves for a second time to revoke probation, the court shall
34 conduct a hearing to determine whether probation shall be
35 revoked. The trial court shall revoke probation if the alleged
36 probation violation is proved and the state proves by a
37 preponderance of the evidence either that the defendant poses a
38 danger to the safety of others or that the defendant is unamenable
39 to drug treatment. If the court does not revoke probation, it may
40 modify or alter the treatment plan, and in addition, if the

1 violation does not involve the recent use of drugs as a
2 circumstance of the violation, including, but not limited to,
3 violations relating to failure to appear at treatment or court,
4 noncompliance with treatment, and failure to report for drug
5 testing, the court may impose sanctions including jail sanctions
6 that may not exceed 120 hours of continuous custody as a
7 treatment tool to enhance treatment compliance and impose other
8 changes in the terms and conditions of probation. The court shall
9 consider, among other factors, the seriousness of the violation,
10 previous treatment compliance, employment, medical conditions,
11 child support obligations, and family responsibilities. If one of
12 the circumstances of the violation involves recent drug use, as
13 well as other circumstances of violation, and the circumstance of
14 recent drug use is demonstrated to the court by satisfactory
15 evidence and a finding made on the record, the court may, after
16 receiving input from treatment and probation, if available, direct
17 the defendant to enter a licensed detoxification or residential
18 treatment facility, and if there is no bed immediately available in
19 the facility, the court may order that the defendant be confined in
20 a county jail for detoxification purposes only, if the jail offers
21 detoxification services, for a period not to exceed 10 days.
22 Detoxification services must provide narcotic replacement
23 therapy for those defendants presently actually receiving narcotic
24 replacement therapy.

25 (F) If a defendant on probation at the effective date of this act
26 for a nonviolent drug offense violates that probation a third or
27 subsequent time either by committing a nonviolent drug
28 possession offense, or by violating a drug-related condition of
29 probation, and the state moves for a third or subsequent time to
30 revoke probation, the court shall conduct a hearing to determine
31 whether probation shall be revoked. If the alleged probation
32 violation is proved, the defendant is not eligible for continued
33 probation under subdivision (a), unless the court determines that
34 the defendant is not a danger to the community and would benefit
35 from further treatment under subdivision (a). The court may then
36 either intensify or alter the treatment plan under subdivision (a)
37 or transfer the defendant to a highly structured drug court. If the
38 court continues the defendant in treatment under subdivision (a),
39 or drug court, the court may impose appropriate sanctions
40 including jail sanctions.

(g) The term “drug-related condition of probation” shall include a probationer’s specific drug treatment regimen, employment, vocational training, educational programs, psychological counseling, and family counseling.

SEC. 8. Section 3063.1 of the Penal Code is amended to read:

3063.1. Possession of Controlled Substances; Parole;

Exceptions

(a) Notwithstanding any other provision of law, and except as provided in subdivision (d), parole may not be suspended or revoked for commission of a nonviolent drug possession offense or for violating any drug-related condition of parole.

As an additional condition of parole for all such offenses or violations, the Parole Authority shall require participation in and completion of an appropriate drug treatment program. Vocational training, family counseling and literacy training may be imposed as additional parole conditions.

The Parole Authority may require any person on parole who commits a nonviolent drug possession offense or violates any drug-related condition of parole, and who is reasonably able to do so, to contribute to the cost of his or her own placement in a drug treatment program.

(b) Subdivision (a) does not apply to:

(1) Any parolee who has been convicted of one or more serious or violent felonies in violation of subdivision (c) of Section 667.5 or Section 1192.7.

(2) Any parolee who, while on parole, commits one or more nonviolent drug possession offenses and is found to have concurrently committed a misdemeanor not related to the use of drugs or any felony.

(3) Any parolee who refuses drug treatment as a condition of parole.

(c) Within seven days of a finding that the parolee has either committed a nonviolent drug possession offense or violated any drug-related condition of parole, the Department of Corrections Parole Division shall notify the treatment provider designated to provide drug treatment under subdivision (a). Within 30 days thereafter the treatment provider shall prepare an individualized drug treatment plan and forward it to the Parole Authority and to the Department of Corrections Parole Division agent responsible for supervising the parolee. On a quarterly basis after the parolee

1 begins drug treatment, the treatment provider shall prepare and
2 forward a progress report on the individual parolee to these
3 entities and individuals.

4 (1) If at any point during the course of drug treatment the
5 treatment provider notifies the Department of Corrections Parole
6 Division that the parolee is unamenable to the drug treatment
7 provided, but amenable to other drug treatments or related
8 programs, the Department of Corrections Parole Division may
9 act to modify the terms of parole to ensure that the parolee
10 receives the alternative drug treatment or program.

11 (2) If at any point during the course of drug treatment the
12 treatment provider notifies the Department of Corrections Parole
13 Division that the parolee is unamenable to the drug treatment
14 provided and all other forms of drug treatment provided pursuant
15 to subdivision (b) of Section 1210 and the amenability factors
16 described in subparagraph (B) of paragraph (3) of subdivision (e)
17 of Section 1210.1, the Department of Corrections Parole Division
18 may act to revoke parole. At the revocation hearing, parole may
19 be revoked if it is proved that the parolee is unamenable to all
20 drug treatment.

21 (3) Drug treatment services provided by subdivision (a) as a
22 required condition of parole may not exceed 12 months, unless
23 the Department of Corrections Parole Division makes a finding
24 supported by the record the continuation of treatment services
25 beyond 12 months is necessary for drug treatment to be
26 successful. If that finding is made, the Department of Corrections
27 Parole Division may order up to two six-month extensions of
28 treatment services. The provision of treatment services under this
29 act shall not exceed 24 months.

30 (d) Violation of parole

31 (1) If parole is revoked pursuant to the provisions of this
32 subdivision, the defendant may be incarcerated pursuant to
33 otherwise applicable law without regard to the provisions of this
34 section. Parole shall be revoked if the parole violation is proved
35 and a preponderance of the evidence establishes that the parolee
36 poses a danger to the safety of others.

37 (2) Non-drug-related parole violations

38 If a parolee receives drug treatment under subdivision (a), and
39 during the course of drug treatment violates parole either by
40 committing an offense other than a nonviolent drug possession

offense, or by violating a non-drug-related condition of parole, and the Department of Corrections Parole Division acts to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked.

Parole may be modified or revoked if the parole violation is proved.

(3) Drug-related parole violations

(A) If a parolee receives drug treatment under subdivision (a), and during the course of drug treatment violates parole either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in paragraph (1) of subdivision (d) of Section 1210, or by violating a drug-related condition of parole, and the Department of Corrections Parole Division acts to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. Parole shall be revoked if the parole violation is proved and a preponderance of the evidence establishes that the parolee poses a danger to the safety of others. If parole is not revoked, the conditions of parole may be intensified to achieve the goals of drug treatment.

(B) If a parolee receives drug treatment under subdivision (a), and during the course of drug treatment for the second time violates that parole either by committing a nonviolent drug possession offense, or by violating a drug-related condition of parole, and the Department of Corrections Parole Division acts for a second time to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. If the alleged parole violation is proved, the parolee is not eligible for continued parole under any provision of this section and may be reincarcerated.

(C) If a parolee already on parole at the effective date of this act violates that parole either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in paragraph (1) of subdivision (d) of Section 1210, or by violating a drug-related condition of parole, and the Department of Corrections Parole Division acts to revoke

1 parole, a hearing shall be conducted to determine whether parole
2 shall be revoked. Parole shall be revoked if the parole violation is
3 proved and a preponderance of the evidence establishes that the
4 parolee poses a danger to the safety of others. If parole is not
5 revoked, the conditions of parole may be modified to include
6 participation in a drug treatment program as provided in
7 subdivision (a). This paragraph does not apply to any parolee
8 who at the effective date of this act has been convicted of one or
9 more serious or violent felonies in violation of subdivision (c) of
10 Section 667.5 or Section 1192.7.

11 (D) If a parolee already on parole at the effective date of this
12 act violates that parole for the second time either by committing
13 a nonviolent drug possession offense, or by violating a
14 drug-related condition of parole, and the Department of
15 Corrections Parole Division acts for a second time to revoke
16 parole, a hearing shall be conducted to determine whether parole
17 shall be revoked. If the alleged parole violation is proved, the
18 parolee is not eligible for continued parole under any provision
19 of this section and may be reincarcerated.

20 (e) The term “drug-related condition of parole” shall include a
21 parolee’s specific drug treatment regimen, and, if ordered by the
22 Department of Corrections Parole Division pursuant to this
23 section, employment, vocational training, educational programs,
24 psychological counseling, and family counseling.

25 SEC. 9. These provisions shall be applied prospectively, and
26 are severable. If any provision of this act or its application is held
27 invalid, that invalidity shall not affect other provisions or
28 applications that can be given effect without the invalid provision
29 or application.

30 SEC. 10. The Legislature finds and declares that the provision
31 of this act are consistent with the purposes of the Substance
32 Abuse and Crime Prevention Act of 2006.

33 SEC. 11. No reimbursement is required by this act pursuant
34 to Section 6 of Article XIII B of the California Constitution
35 because the only costs that may be incurred by a local agency or
36 school district will be incurred because this act creates a new
37 crime or infraction, eliminates a crime or infraction, or changes
38 the penalty for a crime or infraction, within the meaning of
39 Section 17556 of the Government Code, or changes the

1 definition of a crime within the meaning of Section 6 of Article
2 XIII B of the California Constitution.

3 SEC. 12. This act is an urgency statute necessary for the
4 immediate preservation of the public peace, health, or safety
5 within the meaning of Article IV of the Constitution and shall go
6 into immediate effect. The facts constituting the necessity are:

7 In order to ensure that the essential services provided under the
8 Substance Abuse and Crime Prevention Act of 2000 continue to
9 be provided without interruption, it is necessary that this bill go
10 into immediate effect.

11 *SEC. 13. This act shall become operative only if Senate Bill*
12 *556 is also enacted and takes effect on or before January 1,*
13 *2006.*